

ECF No. 115 at 3. Most of Plaintiff's claims were dismissed on *res judicata* grounds, having already been litigated in New Jersey state court, while the remaining claims were dismissed on the merits in Judge Hochberg's April 15, 2013, decision. ECF No. 61. Thus, this action has been closed since April 2013. ECF No. 107 at 1 n.1. Since that time, Plaintiff has made various unsuccessful efforts to appeal or reopen his case and relitigate claims already adjudicated. *See, e.g.*, ECF Nos. 85, 88, 111, 120; and

WHEREAS in his last such attempt, Plaintiff argued that the Supreme Court's recent decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), warranted reopening of his case. ECF No. 120 at 3. In *Tyler*, the Supreme Court held that a plaintiff had standing to bring a Takings Clause claim under the Fifth Amendment where it was alleged that, after seizing and selling the plaintiff's home, the county retained funds exceeding the plaintiff's tax debt. 598 U.S. at 636. Plaintiff argued that the Court, in its equitable power, should retroactively apply *Tyler*'s holding to Plaintiff's claims. ECF No. 113 at 3. Judge Vasquez denied Plaintiff's motion on grounds that (i) *Tyler* was not relevant to any claims previously asserted by Plaintiff; (ii) Plaintiff sought to raise a new Takings Clause claim but did not allege any excess proceeds from the sale of his property; and (iii) in any event, changes in federal law are only retroactively applied to cases that are still open for review. ECF No. 120 at 2-3; and

WHEREAS Plaintiff now seeks reconsideration of Judge Vasquez's decision "to allow the Plaintiff to file a Section 1983 Takings Claim to recover the excess amount from the sale of his property." ECF No. 121 at 1. Plaintiff points to the Court's equitable powers as a basis for the retroactive application of *Tyler* to his case.³ *Id.* at 5-6. In opposition, Defendant ATF argues that Plaintiff's motion must be denied because "it simply is a re-argument of the previously denied

³ While Plaintiff points to the continuing-violations and equitable tolling doctrines as bases for relief, ECF No. 121 at 9-10, 12-13, the Court finds that these arguments are without merit.

[m]otion” before Judge Vasquez. ECF No. 122 at 1. The County Defendants likewise argue that “Plaintiff is seeking another bite at the apple” and fails to cite controlling law that Judge Vasquez has overlooked. ECF No. 126 at 1; and

WHEREAS a party may move for reconsideration of a previous order if there are “matter[s] or controlling decisions which the party believes the Judge has overlooked.” L. Civ. R. 7.1(i). The Court will reconsider a prior order only where a different outcome is justified by “(1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct a clear error of law or prevent manifest injustice.” *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995) (citations and brackets omitted). A court commits a clear error of law “only if the record cannot support the findings that led to that ruling.” *ABS Brokerage Servs. V. Penson Fin. Servs., Inc.*, No. 09-CV-4590, 2010 WL 3257992, at *6 (D.N.J. Aug. 16, 2010) (citing *United States v. Grape*, 549 F.3d 591, 603-04 (3d Cir. 2008)); and

WHEREAS “reconsideration is an extraordinary remedy, that is granted ‘*very sparingly*.’” *Brckett v. Ashcroft*, No. 03-3988, 2003 WL 22303078, at *2 (D.N.J. Oct. 7, 2003) (emphasis added) (citations omitted); *see also Fellenz v. Lombard Inv. Corp.*, 400 F. Supp. 2d 681, 683 (D.N.J. 2005). A motion for reconsideration “may not be used to relitigate old matters, nor to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *P. Schoenfeld Asset Mgmt., LLC v. Cendant Corp.*, 161 F. Supp. 2d 349, 352 (D.N.J. 2001). “Mere ‘disagreement with the Court’s decision’ does not suffice.” *ABS Brokerage Servs.*, 2010 WL 3257992, at *6 (quoting *P. Schoenfeld Asset Mgmt.*, 161 F. Supp. 2d at 353); and

WHEREAS here, Plaintiff fails to state a sufficient basis for reconsideration. There is no dispute that Plaintiff’s relevant claims were adjudicated to final judgment in New Jersey state court

on May 13, 2011, ECF No. 61 at 3-4, and dismissed with prejudice in this Court on April 15, 2013, *id.* at 9. Thus, Plaintiff's claims were resolved nearly a decade prior to the Supreme Court's ruling in *Tyler*. See 598 U.S. 631. As the Supreme Court and Third Circuit have articulated, "[n]ew legal principles, even when applied retroactively, do not apply to cases already closed." *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 758 (1995); see also *Riccio v. Sentry Credit, Inc.*, 954 F.3d 582, 593 (3d Cir. 2020) (noting that controlling interpretations of federal law "must be given full retroactive effect in all cases *still open on direct review*" (quoting *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993) (emphasis added)). Thus, Judge Vasquez did not err in denying to retroactively apply *Tyler* to Plaintiff's closed case, ECF No. 120 at 3, nor has Plaintiff pointed to evidence or controlling law warranting a different outcome; and

WHEREAS Judge Vasquez's decision not to retroactively apply *Tyler* was also appropriate under the circumstances. See *Knight v. Kaminski*, 663 F. App'x 99, 101 (3d Cir. 2016) (rejecting "any categorical rule that a change in decisional law is never an adequate basis for Rule 60(b)(6) relief" (internal quotation marks and citation omitted)). Indeed, Plaintiff asserts that he wishes to raise a takings claim predicated on the tax sale foreclosure carried out by Defendant ATF. ECF No. 121 at 11. However, he already litigated this exact claim in state court, the claim was dismissed, and Plaintiff was "barred from ever re-litigating the issue[] . . . against any or all of the co-defendants named in th[at] action." ECF No. 115-5 at 1; see also ECF No. 115-4 at 34-37. And as Judge Hochberg previously found, Defendants here, against whom Plaintiff seeks to assert an identical claim, satisfy the privity requirement for purposes of *res judicata*. ECF No. 61 at 7-8; see also *Ouaziz v. Murphy*, No. 23-cv-2696, 2024 WL 397708, at *5 (D.N.J. Feb. 2, 2024) (finding that *res judicata* extends to new defendants where a plaintiff "assert[s] essentially the

same claim against different defendants” (quoting *Bruszewski v. United States*, 181 F.2d 419, 422 (3d Cir. 1950)); and

WHEREAS in any event, Plaintiff’s takings claim—predicated on a tax sale foreclosure carried out by a private entity—is substantively distinguishable from the facts at issue in *Tyler* where the foreclosure was carried out by a municipality. *See Tyler*, 598 U.S. at 635; *see also Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’t Prot.*, 560 U.S. 702, 715 (2010) (“[T]he Takings Clause bars *the State* from taking private property without paying for it.” (emphasis in original)); *Flagg v. Yonkers Sav. & Loan Ass’n, FA*, 307 F. Supp. 2d 565, 585 (S.D.N.Y. 2004) (“It is beyond cavil that governmental action is required to trigger the application of [the Takings Clause]; it does not apply to private parties who are not state or governmental actors.”). Plaintiff offers no new evidence or change in controlling law to challenge these conclusions.

Accordingly, it is on this 24th day of April 2024,

ORDERED that Plaintiff’s motion for reconsideration (ECF No. 121) of Judge Vasquez’s August 30, 2023, Opinion and Order (ECF No. 120) is hereby **DENIED**; and it is further

ORDERED that this action shall remain **CLOSED**.

SO ORDERED.

s/ Claire C. Cecchi

CLAIRE C. CECCHI, U.S.D.J.